

Essay

Ten Years in Family Law Court

PAMELA BESSER
THEROUX

My name is Pamela Besser Theroux. I am a family law paralegal living in Northern California, and I was the respondent in a Southern California custody dispute that lasted from 1982 to 1992. I was married for seven and a half years. When I was five months pregnant, my husband ordered me to have an abortion. I refused. At the end of my eighth month he served me with divorce papers. One month later my son, Joshua, was born. Mike, his dad, would not hold him or acknowledge him. There was no relationship. When Josh would cry, his dad would yell, “Your kid is crying—go take care of him!”

I was divorced in 1983. My family is in the newspaper publishing business in the Chicago area. After my divorce, with no job, nowhere to live (I had to sell my house for economic reasons), no family or support system within 2,400 miles, and with my ex-husband not exercising any regular visitation and constantly screaming at me, “Take your kid and get out of here—take your kid and go back to Chicago,” I decided I would move back to Chicago to finish graduate school and be with a family support system. My son was just a little over a year old.

As soon as I notified my son’s father that I was, in fact, going back to Chicago, he did a 360-degree turn and filed for full custody. Had I just left, he probably never would have known, as we rarely saw or heard from him, even though he lived less than two miles away. My attorney told me that proper procedure dictated I let him know, so I sent him a letter. All hell then broke loose. He immediately ran into court and had me stopped from moving by filing for custody (even though 15-month-old Joshua had no idea who he was). This was the beginning of 10 years in court over custody and visitation issues, at least six court-ordered psychological evaluations, and my separate attorney fees and costs that exceeded \$160,000.

We spent countless hours in mediation with family court services from 1983 to 1992. We dealt with mediators who were so hardened by what they did every day that they were rude

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Theroux

and threatening. One mediator in particular was on some kind of mission with us. In my first-ever mediation meeting, Mediator #1 very clearly told us that her job was to keep us out of court and reach a settlement. She told us that if we did not come to an agreement, she would make a recommendation to the judge. She also said that the judge followed her recommendations 90 percent of the time.

At this point, Josh's dad and I lived 400 miles apart. As a preschooler, Josh spent three weeks a month with me and one week with his dad. When it was time for Josh to enter kindergarten, I asked his dad to work out a different visitation schedule. He refused and hired a known "father's rights" (vs. children's rights) psychologist who was well placed within the court system there (who since has had his state license yanked) and who testified that Josh would have no trouble academically, socially, or psychologically attending two schools 400 miles apart each month to satisfy the custody arrangement (three weeks in the San Francisco area and one week in Southern California). To our knowledge, Josh was the first child in the United States *ordered* by a court to do this. It was very hard on Josh, but he did it all through kindergarten. I had to have him tutored just to keep up with his class. The superintendent in Southern California was also up in arms, as attending their school only one week per month did not meet the attendance requirement for them to pass him. That meant that no matter what grade Josh would be in in Northern California, he would always be in first grade in Southern California for his one week per month there. After a year of this arrangement not working for Josh, I asked the court to modify the visitation schedule to allow Josh to attend one school. Mediator #2 didn't agree with me and instead decided that I should move back to Southern California, and that I should be given one week to do so or else give up custody of my son.

During this process, Josh was six years old and required by the Southern California court to attend mediation. Mediator #2 took Josh alone behind closed doors, waved a "magic wand" over his head, and asked him which parent he wanted to live with. According to Josh (who is now 21), each time he would tell the mediator what he felt or what he wanted to do, the mediator would ignore him if it wasn't the "right" answer. Josh began having screaming nightmares after sessions with the mediator.

Once again the court upheld the mediator's recommendation and yanked Josh out of everything he knew and loved and that he had been involved in since age 3. Josh and I were given one week to

move back to Southern California or I was to give up custody. The decision was not based on what was best for the child. The decision was based on dad's testimony that he owned a business in Southern California, owned a home in Southern California, and made more money than I did. Our judge, who was not a family law judge, was leaving for a European vacation the next day, and you could tell the guy just was not "in court" on the day of this terribly important hearing. In fact, at times he appeared to be asleep! But Mediator #2 told the judge what his recommendation was and that is exactly what the judge ordered. As the judge recited his order from the bench, my then-attorney turned to me and said, "They just violated your civil rights . . . courts cannot tell you where you can or cannot live." You have no idea how scared I was at that moment!

Interestingly, right after I made the move back to Southern California, I found out that while the court proceeding was going on, dad was in the middle of a bulk transfer sale of his business and he was losing his home because he had filed bankruptcy! No one cared at this point, especially not the mediator! Mediator #2 then took another step and decided that dad and I had to spend hours in his office each month (yes, at the courthouse) talking about how things were working out and how he wanted us to do things (this was the mediator on a mission).

Fortunately, the ACLU, a group of UCLA law professors, and the California Women's Law Center became interested in my case. Although it took almost four years, we appealed the order moving us to Southern California and won. The appellate court ruled that the Southern California court had been guilty of gender bias and abused its discretion in requiring us to move. Josh and I were permitted to return to Northern California, but we were delayed for six more months because Josh's dad filed another custody motion in superior court.

Even this turned out not to be the end. In August 1992 Josh's father failed to return him home at the end of his summer vacation visitation. I appealed to the court and was turned over to Mediator #3, whose opening words were, "What can we do to make it OK with you that Josh stay with his father?" However, for the *first* time, a judge did not agree with the recommending mediator. Instead, this very kind judge asked my son what he wanted to do and where he wanted to live. Josh was allowed to return to his home. Josh was now 10 years old. As a result of the years of turmoil, Josh spent the next nine years in therapy at Dr. Judith Wallerstein's Center for the Family

in Transition. Josh is now finishing his senior year of college. He has not heard from his dad since he was 18 years old. One of the psychologists whom we were involved with early on told me (once) that it was never about the child, but rather that dad was very angry with me. Well, I know now that that was true; it was never about the child, only the court never seemed to get that. Why else would the court send us out for at least six psychological evaluations over a 10-year period and then *each* time ignore the recommendation of the psychologists and decide solely on the recommendation of the mediators?

Sometimes my duties as a family law paralegal have me attending/assisting in court hearings or trials. I vividly remember my first time in court as a paralegal. My eyes welled up with tears, as I could not believe what I was hearing. I was listening to a judge very kindly and very compassionately explaining a particular process to a pro per litigant. It was so different from anything that I had ever experienced in my 10 years in court.